IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 18906 of 2007(A)

PETITIONER:

SAJIMON U.S., S/O.U.N.SREEDHARAN,
UPPUKANDATHIL HOUSE, PADICHERA P.O., PULPALLY.
(VILLAGE MAN, SULTHAN BATHERY TALUK)

BY ADV. SRI.V.B.UNNIRAJ
SMT.R.S.GEETHA
SRI.V.ARUN

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY ITS CHIEF SECRETARY, TRIVANDRUM.

2. **DISTRICT COLLECTOR, WAYANAD.**

BY SR. GOVERNMENT PLEADER SRI. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.18906/2007 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE CERTIFICATE ISSUED BY THE MEDICAL BOARD.**

EXT.P2: **COPY OF THE ORDER DTD. 02/04/1998 APPOINTING THE PETITIONER.**

EXT.P3: **COPY OF THE DISCHARGE CERTIFICATE DTD. 09/10/1998 ISSUED TO THE PETITIONER FROM TALUK OFFICE, SULTAN BATHERY.**

EXT.P4: **COPY OF THE ORDER DTD. 17/05/1999.**

EXT.P5: **COPY OF THE LETTER DTD. 20/07/1999 ISSUED BY THE DISTRICT COLLECTOR TO THE PETITIONER.**

EXT.P6: **COPY OF THE ORDER GRANTING SCHOLARSHIP TO THE PETITIONER.**

EXT.P7: **COPY OF THE CERTIFICATE ISSUED BY THE DISTRICT MEDICAL BOARD KANNUR.**

EXT.P8: **COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT.**

EXT.P9: **COPY OF THE JUDGMENT IN O.P.NO.20930/1999.**

EXT.P10: **COPY OF THE ORDER DTD. 13/10/1999.**

EXT.P11: **COPY OF THE ORDER DTD. 27/07/2001 ISSUED BY THE 2ND RESPONDENT.**

EXT.P12: **COPY OF THE REPRESENTATION DTD. 4/04/07.**

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): **COPY OF THE REPORT OF DISTRICT MEDICAL BOARD, MANANTHAVADY.**

EXT.R2(B): **COPY OF THE LETTER NO.17511/C1/98 FROM THE SECRETARY, P&ARD.**

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.18906 of 2007 A

Dated this the 25th day of September, 2007.

JUDGMENT

The petitioner, a physically handicapped person, was appointed as a Villageman sponsored by the Divisional Employment Exchange, Wayanad on a provisional basis for a period of 179 days as per Ext.P2 order dated 2.4.1998 by the Assistant Collector, Mananthavady. He joined the service on 15.4.1998. His services were terminated with effect from 9.10.1998 on the expiry of the period appointment. The Government, by order dated 28.9.1998, ordered to reappoint physically handicapped persons, who were engaged in service for the period from 1.1.1997 to 31.12.1997. The said benefit was extended by Ext.P4 Government Order dated 17.5.1999 to the physically handicapped persons, who were in service during the period from 1.1.1998 to 14.8.1998, subject to the conditions already contained in the order dated 28.9.1998.

2. The petitioner was not re-engaged subsequent to 9.10.1998 and therefore, he approached this court in O.P.No.20930/99. In that original petition, Ext.P8 interim order was passed directing the District Collector, Wayanad to re-

engage the petitioner as a Villageman on provisional basis forthwith. Accordingly the petitioner was re-appointed and he rejoined duty on 23.9.1999. The said original petition was ultimately disposed of by Ext.P9 judgment, which reads as follows:

> **"The petitioner, a physically handicapped person sought appointment as Village man. There is already an interim order in CMP No.34532/99. The benefit is claimed under Ext.P4 Government Order. There is no counter affidavit. The writ petition is disposed of in terms of the said interim order."**

3. The petitioner is now continuing as a Villageman, on a provisional basis. He claims regularisation of his services with effect from the date on which he was re-engaged pursuant to Ext.P8 order, claiming the benefit of Ext.P10 Government Order.

4. A counter affidavit has been filed by the 2nd respondent, inter alia, pointing out that the petitioner would be entitled to regularisation of his services consequent upon re-engagement as per Ext.P10 order only if he is a disabled person. Reference in this regard is made to the definition of

the word 'person with disability' in terms of Section 2(t) of Persons with Disabilities (Equal Opportunities) Act, 1995 which reads as follows:

> **"Person with disability" means a person suffering from not less than forty percent of any disability as certified by a medical authority."**

5. Reference is also made to Ext.R2(a), which is the certificate of disability issued by the Wayanad District Medical Board on 4.1.1999, where the petitioner's disability has been assessed at 22%. Reference is also made to Ext.R2(b) wherein the petitioner has been intimated that his request for re-engagement cannot be considered on the ground that his physical disability is below 40%.

6. I heard Sri.V.B.Unniraj, learned counsel for the petitioner and Sri.Nandakumar, learned Senior Government Pleader.

7. Exts.R2(a), P1, P6 and P7 are certificates issued by different Medical Boards showing the physical disability of the petitioner. The percentage of disability of the petitioner would also be a relevant factor in considering whether the petitioner is entitled to be re-engaged and

regularised in terms of Ext.P10 Government Order. In the light of the conflicting medical reports, it would be appropriate that the petitioner's case be considered by the State Government and if it turns out that the physical disability is 40% or above, then obviously the petitioner's claim for regularisation has to be considered by the Government in terms of Ext.P10 Government Order.

8. In the circumstances, the writ petition is disposed of in the following manner:

(a) The second respondent District Collector shall refer the petitioner's case to the State Medical Board and the State Medical Board shall examine him and issue a certificate of disability, applying the norms and guidelines which are normally adopted. The certificate of disability, which is issued by the State Medical Board, shall then be placed before the District Collector, who shall then forward it to the Government. On the basis of the certificate so issued by the State Medical Board, the Government shall consider the request of the petitioner for regularisation in terms of Ext.P10.

(b) The District Collector shall refer the case of the petitioner to the State Medical Board, within one month from the date of receipt of a copy of this judgment and the State Medical Board shall

examine him within one month from the date of request made by the District Collector.

(c) On receipt of the report of the State Medical Board, the District Collector shall, without any delay forward necessary papers to the Government. The Government shall take a decision, within a period of three months thereafter, on the question as to whether the petitioner is entitled to regularisation.

(d) The entire process shall be completed within a period of six months from the date of receipt of a copy of this judgment.

(e) To enable the respondents to proceed with the implementation of the directions given above, the petitioner shall produce a copy of this judgment before the 2nd respondent as well as before the Director of Health Services. This shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-

V.GIRI)

JUDGE

sk/

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